

## **FULL RELEASE AND SETTLEMENT AGREEMENT**

The purpose of this Agreement is to formalize the settlement, entered at mediation on May 1, 2017, which fully and completely resolved any and all disputes by and between Plaintiff V.W., a minor, by and through her Guardian Ad Litem, Tanaya Barber, Individually and as Successor in Interest of Decedent MICHAEL WHITE, ("PLAINTIFF"), and Defendants CITY OF VALLEJO, a municipal corporation; BARRY BOERSMA, HERMAN ROBINSON, JOHN CUNNINGHAM, MIKE KOUTNIK, RAUL MUNOZ, and ROBERT NICHELINI ("DEFENDANTS") which were or could have been brought *V.W. v. Nicholini, et al.*, United States District Court, Eastern District of California, Case No. 2:12-cv-01629-MCE-AC (hereinafter, the "ACTION").

Pursuant to this Agreement, the CITY OF VALLEJO will cause to be paid to PLAINTIFF by drafts or checks in the total aggregate amount of \$135,000, payable as designated by Plaintiff's attorney, Benjamin Nisenbaum, Esq. as a complete settlement of all of the PLAINTIFF'S claims against all of the RELEASED PARTIES. The entire settlement proceeds shall be deposited into PLAINTIFF's counsel's trust account and subject to the restrictions on distribution, pending dismissal of the ACTION, as set forth below.

In exchange for said payment, PLAINTIFF hereby waives, releases and forever discharges and covenants not to sue DEFENDANTS, their employer, agents, independent contractors, insurers, risk-sharing pools, attorneys, representatives, and all persons acting by, through, under or in concert with them ("RELEASED PARTIES"), for any and all claims, demands, causes of action, suits, appeals, liabilities, obligations, controversies, damages, compensation, costs, expenses, and attorneys' fees, of any kind and nature, known or unknown, under State or Federal law, suspected or unsuspected, and whether concealed or hidden, existing or claimed to exist, or which can ever hereafter arise out of, relate to, or result from the facts, circumstances, allegations or claims made, or which could have been made, in the ACTION ("RELEASED CLAIMS"). The RELEASED CLAIMS include, but are not limited to, claims for

economic damages, general damages, damage to property, emotional distress, physical injury, mental injury, loss of income, loss of earning capacity, medical expenses, violation of rights, attorneys' fees or costs, and injunctive or other non-monetary relief.

The provisions of section 1542 of California Civil Code are expressly waived, and the PLAINTIFF understands that this section provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The PLAINTIFF expressly waives and releases any right or benefit that the PLAINTIFF has or may have under Civil Code section 1542. The PLAINTIFF acknowledges that she may discover facts different from or in addition to those facts now known to her or believed to be true with respect to any or all of the matters covered by this Agreement, but the release contained in this Agreement shall remain effective notwithstanding such different or additional facts or the discovery of them.

The PLAINTIFF hereby agrees to request dismissal with prejudice of the entire ACTION and hereby authorizes and directs PLAINTIFF'S attorneys to execute and file a Stipulation for Dismissal with prejudice of the entire ACTION, and DEFENDANTS will cooperate in obtaining such dismissal. This settlement is contingent upon the Court dismissing the ACTION with prejudice. PLAINTIFF and her counsel agree that no money will be released to PLAINTIFF, her counsel or any lienholders or assignees, from counsel's trust account until the Court in the ACTION has dismissed the ACTION with prejudice.

Plaintiff acknowledges that she was an adult, over 18 years of age, at the time she executed the Term Sheet at the mediation in this Action on May 1, 2017. Because the PLAINTIFF originally sued as a minor, PLAINTIFF will file whatever papers are necessary to obtain Court approval of the request for dismissal, including, if necessary, a request for approval of minor's compromise with the Court. RELEASED PARTIES, including DEFENDANTS, bear

no responsibility for obtaining the approval of the minor's compromise, and in no event will be responsible for any payment above the agreed aggregate total settlement. Defendants will cooperate with PLAINTIFF in executing documents necessary to obtain dismissal of the action.

The CITY OF VALLEJO shall have no obligation to make the payment to PLAINTIFF until this Agreement is fully executed.

All parties agree that this Agreement constitutes a compromise of disputed claims. This Agreement does not constitute, and shall not be treated as, evidence or admission of liability of DEFENDANTS or any of the other RELEASED PARTIES.

It is expressly understood that this release extends to any and all claims which any party may have for attorney's fees and/or costs involved in the ACTION. In particular, PLAINTIFF acknowledge that any rights she may have to recover costs or attorneys' fees are subject to the above payment, and PLAINTIFF agrees that she is waiving any claims for costs and/or attorneys' fees, statutory or otherwise, from any of the RELEASED PARTIES, including the DEFENDANTS, arising out of or relating to the ACTION and to any of the RELEASED CLAIMS.

The PLAINTIFF represents and warrants that no claims, causes of action, or rights based upon or arising out of any matter released in this Agreement have been transferred or assigned to any other person, corporation or entity, either voluntarily or involuntarily. The PLAINTIFF agrees to defend, indemnify and hold harmless RELEASED PARTIES against any claim by any person or entity based in whole or in part on any of the RELEASED CLAIMS, or in any way arising out of the incident that is the subject of the ACTION, including but not limited to claims by insurers, medical providers, heirs, successors, relatives, or assignees of PLAINTIFF.

PLAINTIFF represents and warrants that PLAINTIFF shall be solely responsible for satisfaction of any lien on PLAINTIFF'S recovery in this ACTION. PLAINTIFF warrants that PLAINTIFF has or will satisfy any and all liens against the PLAINTIFF'S recovery in this action solely from proceeds from the settlement, and that if any claim for such lien arises against RELEASED PARTIES, PLAINTIFF shall hold harmless, defend, and indemnify RELEASED

PARTIES from any claims, allegations, or causes of action related to such liens. PLAINTIFF'S counsel warrants that he shall not release any of the settlement funds received from or on behalf of DEFENDANTS to any non-lienholder until counsel has received lien releases from any and all lienholders, if any.


In executing this release, PLAINTIFF acknowledges that PLAINTIFF has had the opportunity to obtain the advice of independent legal counsel. PLAINTIFF represents that, in executing this Agreement, PLAINTIFF has relied solely upon PLAINTIFF'S own judgment, beliefs and knowledge, and advice of PLAINTIFF'S own independently selected counsel, and did not rely upon any representations or statements concerning the matters referred to herein, except as explicitly set forth in this Agreement. PLAINTIFF'S entry into this Agreement is voluntary, deliberate, and informed.

This Agreement embodies the entire understanding and agreement of the parties and there are no further or other agreements or undertakings, written or oral, in effect between the parties relating to the subject matter hereof. All prior negotiations or agreements, if any, between the parties relating to the subject matter hereof, are superseded by this Agreement. This Agreement was reached at arm's length and in mutual negotiation between the parties, and it shall not be interpreted or construed in favor of or against any party on the ground that said party drafted this Agreement.

This Agreement was entered into in Solano County, California, and is governed by the laws of the State of California.

Faxed or duplicate signatures on this Agreement shall be deemed as effective as original signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall collectively constitute one Agreement.

Dated: 05/30/2017

  
\_\_\_\_\_  
Plaintiff VIVIAN WHITE Individually and as  
Successor in Interest of Decedent MICHAEL  
WHITE

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff TANAYA BARBER, Guardian Ad Litem  
for Plaintiff V.W. Individually and as Successor in  
Interest of Decedent MICHAEL WHITE

Approved as to content and form by PLAINTIFF'S counsel. PLAINTIFF's counsel agrees not to release any amounts to any person, including PLAINTIFF, counsel or any lienholders or assignees, from the proceeds of this settlement until the Court dismisses the ACTION with prejudice. Further, PLAINTIFF'S counsel warrants and agrees that any liens outstanding against the proceeds from this settlement shall be fully resolved by PLAINTIFF or PLAINTIFF'S attorneys before distribution of any settlement funds to any non-lien claimants, including PLAINTIFF and her counsel. Further, PLAINTIFF'S counsel warrants and agrees that he has fully explained the contents and ramifications of this Agreement, and that PLAINTIFF

has acknowledged to him that PLAINTIFF fully understands the terms of this Agreement and consents thereto.

Dated: 5/30/17

LAW OFFICES OF JOHN BURRIS

A handwritten signature in blue ink, appearing to read "Ben Nisenbaum", written over a horizontal line.

BENJAMIN NISENBAUM, Esq., Attorney for  
PLAINTIFF